

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5064 OF 2022

Kishor Uttamchand Oswal
age 64 years, occ. Business
r/o B-703, Anup[am, Gas Work Lane
Lalbaugh, Mumbai 400 012.

Petitioner

Versus

1. The Government of India
(Union of India)
Through Deputy Secretary
Ministry of Shipping, Road Transport & Highway
New Delhi
2. The State of Maharashtra } Deleted vide Court
Through district Collector, Dhule } order dated
Office of District Collectorate } 05.05.2022
Tq. & Dist. Dhule. }
3. The District Collector, Dhule
Office of District Collectorate
Tq. & Dist. Dhule.
4. The Competent Authroity
National Highway Tribunal &
Special Land Acquisition Officer (No. 2)
Dhule, Tq. & Dist. Dhule.
5. The Project Director,
The National Highways Authority of India
R/o Saptashruni, A.S.B. 43,
Ashwini Nagar, CIDCO, Nashik – 9
Dist. Nashik.

Respondents

Mr. S. G. Chapalgaonkar, Advocate for the petitioner.
Mr. S. N. Morampalle, AGP for respondent/State.
Mr. B. M. Dhanure, Advocate for respondents No. 1 and 4.

Mr. D. M. Manorkar, Advocate for respondent No. 5.

CORAM : M.G. Sewlikar, J.

DATE : 23rd AUGUST, 2022.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent of the parties, heard finally at the stage of admission.
3. The facts in brief are that the petitioner is the owner of the land Survey no. 130 situated at Devpur, Dist. Dhule. On 2nd May, 2011, award under Section 3G of National Highways Act was passed. As per the award, 3300 sq. mtrs. land was acquired from Survey No. 130. Notice dated 12th October, 2011, of handing over possession was issued to the petitioner. On 12th October, 2021, petitioner was issued notice calling upon him to deposit amount of Rs. 97,45,000/- on the ground that the land of 1351 sq. mtrs was acquired for the road and the remaining land was acquired for service road for which compensation was not payable. The total compensation paid was Rs. 1,65,00,000/-. The compensation for 1351 sq. mtrs. land comes to

Rs. 67,55,000/-. Petitioner deposited remaining amount of Rs. 97,45,000/- with the competent authority under protest.

4. Petitioner, thereafter, filed arbitration application. The Divisional Commissioner, Nasik, was appointed as an Arbitrator. Respondent No. 5 caused appearance before the Arbitrator. The arbitration proceedings are still pending.

5. On 10th September, 2012, petitioner filed application for amendment. By this amendment application, petitioner sought amendment in paragraph No. 1 of the arbitration application. According to the petitioner, the area mentioned in paragraph No. 1 is 1351 sq. mtrs. It ought to have been 3300 sq. mtrs. The petitioner also sought amendment regarding enhancement of amount of compensation. By this amendment application, the petitioner claimed compensation at enhanced rate of Rs. 1,500/- per sq. mtrs.

6. It appears that respondent No. 5 did not file say to the application till the year 2022. In the year 2022, respondent No. 5 filed say to the application for amendment.

7. The learned Arbitrator allowed the amendment so far as enhancement in compensation is concerned but rejected the amendment in respect of correction of area. The learned Arbitrator, while rejecting the application, made following observations :

In this regard, it is important to see the observation of Hon. Supreme Court in Civil Appeal No. 5567/2008 decided on 09/09/2008 which is as under :

“13. Therefore, it is clear from the above that by way of an amendment, the appellants are now completely making out a new case by alleging that the appellants were incurring damages on continuous basis, which is contrary to the pleadings made in the written statement and the counter claim which has already been stated hereinabove.”

In the present case, the arbitral application has been filed on 25/11/2011 i.e. 10 years 02 months from the current date. But the applicant has not filed his written statement despite of ample opportunity. Though he has filed the amendment application in 2012, he has neither filed the necessary evidence for seeking such amendment. Therefore, keeping in view the observation of Hon' Apex Court, it will not be proper to allow the amendment as prayed by the applicant.

This order is impugned in this petition.

8. I have heard Shri Chapalgaonkar, learned counsel for the petitioner, Shri Manorkar, learned counsel for respondent No. 5, Shri

Dhanure, learned counsel for respondents No. 1 and 4 and learned AGP for respondent No. 3. It seems that respondent No. 2 has been deleted by order of this Court.

9. Learned counsel for the petitioner submits that as per award, 3300 sq. mtrs. land was acquired. However, by mistake, area is mentioned as 1351 sq. mtrs. in the arbitration application. He submits that respondent No. 5 does not dispute that the land acquired was 3300 sq. mtrs. The only dispute is whether compensation for remaining area of 1649 sq. mtrs is admissible or not.

10. Learned counsel Shri Manorkar and Shri Dhanure submit that the petitioner did not prosecute this application for a period of almost 10 years. No reason is assigned for not prosecuting this application for such a long period. They submit that compensation was payable only for the land which was acquired for the road and not for the land which was being used for service road. They further submit that the petitioner did not challenge the notice dated 12th October, 2011, requiring the petitioner to deposit the remaining amount of compensation. They, therefore, submit that the

order passed by the learned Arbitrator is correct and no interference is warranted.

11. As indicated earlier, it is not disputed that the land of the petitioner from Survey No. 130 to the extent of 3300 sq. mtrs was acquired and award to that effect has also been passed. The only point of dispute is whether compensation for the land to the extent of 1949 sq. mtrs supposed to be acquired for service road is payable or not. The petitioner has filed arbitration proceedings for the very purpose that compensation is payable for 3300 sq. mtrs area which has been acquired by respondent No. 5. Therefore, the parties are *ad idem* so far as acquisition of land is concerned. The only dispute is with regard to the compensation payable for the land which is acquired for service road. Learned counsel for respondents No. 1 and 4 submits that dispute has been raised before the Arbitrator about the area acquired. This contention is stated to be rejected since the notice for handing over possession also shows that petitioner was asked to handover possession of 3300 sq. mtrs land. Therefore, the learned Arbitrator committed grave error in rejecting the application. The Arbitrator was oblivious of the fact that the petitioner had filed application in the year 2012 and the respondent did not file its say till

2022. Respondent, it seems, was in deep slumber till the year 2022. Therefore, the learned Arbitrator was not right in observing that the petition was not prosecuted for 10 years. Nothing prevented the Arbitrator from passing order on the application for amendment if say was not filed for 10 years.

12. Amendment is formal in nature as the area acquired is not disputed. In this view of the matter, the learned Arbitrator was not right in observing that it will amount to introducing a new case. In view of this, the petition needs to be allowed. Petition is, therefore, allowed subject to cost of Rs. 20,000/-. Rule made absolute in above terms.

(M. G. SEWLIKAR)
Judge

dyb